



STATE OF CALIFORNIA

## STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)  
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May 31, 1994

Mr. Robert C. Petersen  
Santa Cruz County Assessor  
701 Ocean Street  
Santa Cruz, CA 95060

RE: Property Tax Rule 462.5

Dear Mr. Petersen:

Mr. Robert C. Petersen

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May 31, 1994

Your letter of May 9, 1994, to The Board of Equalization regarding and 's property has been referred to me for response. We understand the facts of this matter to be as follows:

### FACTS

("Owners") own two parcels of land. Each of the two parcels is currently being used as a single family residence rental. Both parcels are zoned C-1. The Owners wish to sell both parcels to the Santa Cruz County Redevelopment Agency ("Purchaser") and wish to purchase replacement property that will be compatible with the provisions of Property Tax Rule 462.5. The Owners have inquired as to what types of commercial property might qualify under Rule 462.5:

1. Vacant land zoned C-1?
2. Property with existing commercial use as allowed under C-1 zoning?

3. Vacant C-1 land with an intent to construct a commercial building as allowed under the zoning?

LEGAL ANALYSIS

As you know, Section 68 of the Revenue and Taxation Code implements subdivision (d) of Section 2, Article XIII A of the California Constitution and provides an exclusion for change in ownership for the acquisition of real property as a replacement for property taken by eminent domain, etc. Property Tax Rule 462.5 (18 California Code of Regulations Section 462.5) implements Section 68 and provides that

"The term 'change in ownership' shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

- (1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or
- (2) Acquisition by a public entity, or
- (3) Governmental action which has resulted in a judgment of inverse condemnation.

Rule 462.5, subdivision (c), states, in pertinent part, that replacement property "shall be deemed comparable to the replaced property if it is similar in size, utility, and function." Under subdivision (c)(1), property is similar in function if the replacement property is subject to "similar governmental restrictions, such as zoning". Under subdivision (c)(2), property is similar in size and utility "only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken." The specific and distinct examples given include vacant, commercial, single-family residential and duplex, and multi-family residential other than duplexes. In addition, subdivision (c)(2)(A) of Rule 462.5 states that:

"A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced property, shall to the extent of the dissimilar use be considered not similar in utility."

Based on Rule 462.5, subdivision (c)(1), if in this case the Owners replace the two C-1 single family residence rentals with

property zoned C-1, as indicated in your letter, such replacement property could be considered similar in function to the replaced property since both the replaced and the replacement properties would be subject to similar governmental restrictions, i.e., C-1 zoning. However, although the requirement of similarity in function appears to be met in this case, the replacement property must also meet the requirements of similarity in size and utility in order to be compatible with the provisions of Rule 462.5, subdivision (c)(2), i.e., the replacement property must be, or must be intended to be, used in the same manner as the replaced property.

Based on the specific requirements of Rule 462.5, subdivision (c)(2), the Owners would have to replace the single family residence rentals with either existing single family residence or duplex rentals at the time of purchase, or with properties which are not currently single family residence or duplex rentals but which the Owners intend to transform to such.

Thus, if the Owners replace the single family residence rentals with vacant land zoned C-1, vacant land with the intent to construct a commercial building as allowed under C-1 zoning, or with other property with existing commercial use as allowed under C-1 zoning, such replacement properties would be used for a purpose substantially different than the use made of the replaced property and would not be similar in size and utility or "comparable" to the single family residence rentals within the meaning of Rule 462.5, subdivision (c)(2).

In addition, in this case, it appears that the replacement properties mentioned in your letter would be used for a purpose substantially different than the use made of the replaced properties. Pursuant to Rule 462.5, subdivision (c)(2)(A), such substantially different use of the replacement property or properties "shall to the extent of the dissimilar use be considered not similar in utility." To the extent that the replacement property is not similar in size, utility and function, the property "shall be considered to have undergone a change in ownership." (Rule 462.5, subdivision (c)(3)). Thus, if the Owners replace the single family residence rentals with property or properties other than single family residence or duplex rentals or properties to be transformed as such, the replacement property or properties will have undergone a change in ownership under this subdivision.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. If you have further questions on this issue, or if you need additional information, please do not hesitate to contact me at (916) 324-2579.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

*/s/ Luma G. Serrano*

Luma G. Serrano  
Staff Counsel

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precednt/emdomain/94004.lgs

cc: Mr. John Hagerty, MIC:63  
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Ms. Jennifer Willis, MIC:70